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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE**

ENOCH ADAMS, JR., LEROY ADAMS,
ANDREW KOENIG, JERRY NORTON
DAVID SWAN and JOSEPH SWAN.

Plaintiffs,

V.

TECK COMINCO ALASKA INCORPORATED
Defendant.

Case No. A04-49 (JWS)

PLAINTIFFS' OBJECTIONS TO TECK COMINCO & NANA'S FINAL EXHIBIT LIST

NANA REGIONAL CORPORATION and
NORTHWEST ARCTIC BOROUGH.

Intervenors-Defendants.

Plaintiffs Enoch Adams

Plaintiffs Enoch Adams, Jr., *et al.* (“Adams”) submit the following objections to Teck Cominco’s Exhibit List. Adams reserves the right to supplement, modify or withdraw any of the objections made. In addition, Adams reserves the right to interpose a specific objection at trial to any exhibit where a copy of the exhibit was not provided prior to the filing of these objections.

1 **I. ADAMS SPECIFICALLY OBJECTS TO A NUMBER OF EXHIBITS**

2 Adams objects to the exhibits listed below on several grounds: some of the exhibits are
 3 not relevant, some have not been authenticated, and some are hearsay not subject to any
 4 exception. The authentication and hearsay objections are largely self-explanatory, and are listed
 5 with the exhibit number in the table below.

6 More nuanced are the relevance objections. There are several classes of documents that
 7 Adams objects to on grounds of relevance: State of Alaska documents, withdrawn permits or
 8 certifications, amended discharge monitoring reports (DMRs) filed with the U.S. Environmental
 9 Protection Agency (EPA), whole effluent toxicity (WET) tests with regard to *Pimephales*
 10 *promelas*, the aquatic biomonitoring reports, and the studies of the Kivalina environment.
 11 (Adams has separately filed a motion in limine challenging a number of the documents listed
 12 below because of Teck Cominco's failure to disclose those documents before January 22, 2008;
 13 see Docket 208).

14 **A. The State of Alaska documents are not relevant.**

15 This is a federal lawsuit based on a federal permit under a federal law, the Clean Water
 16 Act. Documents, particularly Compliance Orders, from the State of Alaska are simply not
 17 relevant to liability or penalties in this case. Exhibits 1003, 1004, 1005, 1006, 1646, 1712, 1713,
 18 1726, 1727 and 1728 fall into this category.

19 **B. Permits or Certifications that were never operative and have been
 20 withdrawn are not relevant.**

21 Teck Cominco includes as Exhibit 1000 the 2007 Mine Permit from EPA (which it
 22 mislabels as the 1998 permit). That permit, which never took effect because of administrative
 23 appeals, was withdrawn by EPA. See Docket 181. As it never took effect, and has been
 24 withdrawn, it is not relevant for either liability or penalties. Similarly, the State's 401
 25 Certification (Exhibit 1007) has also been withdrawn by the State and thus is two levels removed
 26 from relevance: first, it is a state document, and second, it is not operative. Cole dec. ¶2.

27 **C. The Amended DMRs are not relevant.**

28 As this Court knows [*see, e.g.*, Order at Docket 104 at 10], Teck Cominco has often

1 amended its DMRs, sometimes up to six years after the original DMR was filed with the EPA.
 2 These DMRs are Teck Cominco's attempt to sanitize its earlier violations, a ploy rejected by
 3 Courts across the U.S., including the Ninth Circuit and this Court. Teck Cominco's DMR
 4 revisions – many years after the original DMRs were filed – are a post-complaint attempt to deny
 5 its own earlier admissions. As such, they are an attack on its own laboratory results and earlier
 6 DMR reporting, a form of impeachment expressly disallowed in this Circuit and by this Court in
 7 a previous Order. Here, Teck Cominco has refused to authenticate the original DMRs which are
 8 offered by Adams as exhibits, while offering only the amended DMRs as its own trial exhibits.
 9 These amended DMRs are not relevant to Teck Cominco's liability or penalties because the
 10 *original* DMRs filed with EPA are what establish liability. The Ninth Circuit and this Court's
 11 earlier rulings in this case instruct us so.

12 **1. The Ninth Circuit does not allow defendants to impeach their DMRs.**

13 In the Ninth Circuit, a discharger is not allowed to escape liability by impeaching its own
 14 DMRs during litigation. *Sierra Club v. Union Oil Co. of Cal.*, 813 F.2d 1480, 1492 (9th Cir.
 15 1988), *vacated for reconsideration*, 485 U.S. 931 (1988), *reinstated & amended*, 853 F.2d 667
 16 (9th Cir. 1988) (“*Sierra Club I*”). The NPDES program “fundamentally relies on self-
 17 monitoring.” *Id.* at 1491. Allowing the self-monitoring report to be “prima facie rather than
 18 conclusive evidence of an exceedence of a permit limitation” would undermine the purposes of
 19 the Clean Water Act by creating “considerable risk [for citizen groups] whenever they initiated a
 20 citizen enforcement action” and “rewarding permittees for sloppy laboratory practices.” *Id.* at
 21 1492. As the *Sierra Club I* Court explicitly stated, “We conclude that when a permittee’s reports
 22 indicate that the permittee has exceeded permit limitations, the permittee may not impeach its
 23 own reports by showing sampling error.” *Id.* By revising its DMRs after the filing of the KRPC
 24 litigation and this litigation, Teck Cominco cannot wipe away its pre-complaint reports of
 25 violations.

26 As a Court explained in *Student Pub. Interest Research v. Georgia-Pacific Corp.*, 615 F.
 27 Supp. 1419, 1429 (D.N.J. 1985),

28 It is well established that records required to be kept by law, such as DMRs, may be

1 deemed to be admissions for purposes of establishing civil liability. [citation omitted]
 2 Such a practice has been approved for reports kept pursuant to the Clean Water Act.
 3 *United States v. Ward*, 448 U.S. 242, 254 [] (1980). Consequently, there can be no
 4 question that the data disclosed in defendant's DMRs may be accepted as true.

5 The Ninth Circuit has held that to allow a defendant discharger to impeach its own self-
 6 monitoring reports "would be sanctioning countless additional hours of NPDES litigation and
 7 creating new, complicated factual questions for district courts to resolve." *Sierra Club I*, 813
 8 F.2d at 1492. As the Court in *Save Our Bays & Beaches v. City and County of Honolulu*, 904 F.
 9 Supp. 1098 (D. Haw. 1994) pointed out: "Because these reports are submitted under penalty of
 10 perjury, they constitute admissions of noncompliance which bind the defendant in this
 11 proceeding." *Id.* at 1138. Accordingly, courts have consistently found that self-monitoring
 12 reports "are 'virtually unassailable.'" *United States v. Aluminum Co. of America*, 824 F. Supp.
 13 640, 648 (E.D. Tex. 1993).

14 In response to the earlier KRPC litigation and this litigation, Teck Cominco made a
 15 wholesale set of revisions to its DMRs in 2003 and again in 2005, often "revising" data that had
 16 been submitted to EPA more than five years earlier. Cole dec. ¶3. These post-complaint
 17 "amendments" are exactly the type of DMR impeachment the Ninth Circuit forbids, as this Court
 18 determined in an earlier Order.

19 The revisions are perhaps most brazen in the cyanide context. On May 19, 2005 – long
 20 after the close of document discovery in this case – Teck Cominco amended 15 of its DMRs,
 21 from June 1999 to September 2002, to show a different monthly average cyanide number in the
 22 DMR's table. Teck Cominco revised 15 out of the 16 DMRs that Adams alleged demonstrated a
 23 monthly cyanide violation. Cole dec. ¶4. It did not revise any other DMRs at this time except
 24 those which demonstrated cyanide monthly violations. Cole dec. ¶4. In late May 2005, after the
 25 document discovery cut-off, as Adams was finishing preparing its summary judgment motion,
 26 Teck Cominco sent it 15 new revised DMRs, and subsequently refused to stipulate to the use of
 27 the 15 earlier DMRs which it had authenticated in the KRPC litigation. Cole dec. ¶5. Teck
 28 Cominco is now trying this same tactic at trial.

29 **2. This Court has held, in this case, that Teck Cominco may not impeach
 30 its DMRs through revisions.**

In its October 28, 2005 “Order from Chambers [Re: Motions at Dockets 41 and 52]” [Docket 104], this Court addressed Teck Cominco’s argument that its revised DMR insulated it from an alleged cadmium violation. Teck Cominco attempted to distinguish the language in *Sierra Club I* from the situation in this case, where Teck Cominco impeached its DMRs by amending them, rather than simply attacking them in litigation. Teck Cominco had moved for summary judgment on a June 13, 2000 cadmium violation that it had “cleaned up” by revising its DMR years after the fact. This Court held,

Teck’s arguments for distinguishing *Sierra Club* are not persuasive. In essence, they boil down to the proposition that Teck does not seek to use sampling error as a defense but rather to use the “correct” DMR to show there was no violation. Such an approach still falls within the reach of the *Sierra Club* rationale. First, litigating over which of two reports is the “correct” one encourages additional hours of litigation. In a related way, providing Adams’ counsel with a second “correct” report on March 7, 2003, did not reduce plaintiff’s litigation risk, unless one first posits that the second report must necessarily be the correct one. Third, while it may be that the “sloppy” lab work here was that of CT&E, not Teck or Columbia, CT&E was the contractor chosen by Teck to analyze samples for reporting purposes, and so it is not unfair to require Teck to bear the consequences of CT&E’s presumed error. Finally, it may be noted that there is a sampling error issue inherent even in the “corrected” DMR, because it recited lab results from CT&E which would show a violation unless they are discredited as erroneous. Teck’s motion for summary judgment on the June 13, 2000 cadmium claim lacks merit. Application of the rationale in *Sierra Club* to the facts shows that Adams is entitled as a matter of law to a determination that there was a cadmium violation on June 13, 2000.

Order at 10. Teck Cominco cannot now succeed in making the same argument for its other DMR revisions, including the many amended DMRs it now offers as trial exhibits. The amended DMRs that Adams objects to are listed in the table below, and include 1008, 1020, 1031, 1043, 1055, 1084, 1099, 1110, 1117, 1125, 1136, 1149, 1165, 1172, 1193, 1202, 1217, 1229, 1245, 1275, 1339, 1340, 1394, 1418, 1446 and 1604.

D. WET test results with regard to *Pimephales promelas* are not relevant.

Teck Cominco lists lab results of WET tests of *Pimephales promelas* in its exhibit list. As Teck Cominco well knows, the only allegations of WET violations that Adams has alleged all have to do with toxicity exceedances in the test of *Ceriodaphnia dubia* (also known as the “water flea”), not *Pimephales promelas* (also known as the “fathead minnow”). Cole dec. ¶6. Thus, results from the fathead minnow studies are not relevant to either liability or penalties. The exhibit is 1218, and are listed below in the chart.

1 **E. The aquatic biomonitoring studies are not relevant.**

2 Teck Cominco offers a host of biomonitoring studies. These studies are not relevant at
 3 the liability phase nor at the penalties phase: Teck Cominco's liability is established if it violates
 4 its permits, whether or not there is an impact on the environment. Further, standing is already
 5 established in this case, so the impact on plaintiffs or the environment of Teck Cominco's
 6 discharges is no longer relevant. Finally, Teck Cominco has previously offered such studies as
 7 part of its argument that "the water is cleaner now than before mining." This misses the point of
 8 this lawsuit: the water would be cleaner than it is now if Teck Cominco had not violated its
 9 permits thousands of times over the past decade. The studies do not address this latter point, and
 10 are thus not relevant. These studies include exhibits 1656, 1657, 1658, 1659, 1661, 1662, 1727,
 11 1728, 1734, 1735, 1736, 1737, 1738, 1738B, 1740.

12 **F. The studies of the Kivalina environment are not relevant.**

13 Teck Cominco includes several studies of Kivalina water and environs. These are not
 14 relevant for two reasons. First, standing has already been established in this case. Docket 136 at
 15 8. Second, even if it were not established, plaintiffs would not have to show harm to Kivalina to
 16 demonstrate standing. Thus, the sanitary surveys and related documents are not relevant. This
 17 includes exhibits 1645, 1647, 1714, 1715, 1716, 1717, 1718, 1719, 1720 and 1721.

18 The chart below details the various objections to specific exhibits by Adams.

19 **II. ADAMS EXHIBIT OBJECTION CHART**

Exhibit No.	Title/Description	Bates No.	Objection
1000	2007 Permit (mislabelled as "1998 Permit but dated April 12, 2007)	TC 038037-38076 RD	Relevance: permit was never operative and is now withdrawn

1 2 3 4 5 6	1003 ADEC COBC for TDS dated June 2, 2002	TC 029771-29805 RD	Relevance: not relevant because this is an Alaska State permit compliance document. Teck Cominco's compliance with Alaska water quality standards is not at issue in this case. What is at issue is Teck Cominco's compliance with its federal permit.
7 8 9 10 11 12	1004 ADEC 2004 COBC dated May 10, 2004	NA	Relevance: not relevant because this is an Alaska State permit compliance document. Teck Cominco's compliance with Alaska water quality standards is not at issue in this case. What is at issue is Teck Cominco's compliance with its federal permit.
13 14 15	1005 1998 ADEC 401 Certification dated July 22, 1998	NA	Authentication
16 17 18	1006 2003 ADEC 401 Certification dated June 23	NA	Relevance; not provided
19 20 21 22	1007 2007 ADEC 401 Certification dated February 12, 2007	TC 011191-11193 RD	Relevance: not relevant because ADEC has withdrawn this 401 certification. No longer operative.
23 24	1008 May 1999 Mine DMR	TC 038613-38661 RD	Relevance (subsequently amended), Authentication
25 26	1020 June 1999 Mine DMR	TC 11203-11206 RD; TC 35171-35173 RD; TC 000234-279 RD	Relevance (subsequently amended), Authentication
27 28	1031 July 1999 Mine DMR	TC 035171-35174; TC 24109-24111 RD; TC 11194-11199 RD; TC 000280-349 RD	Relevance (subsequently amended), Authentication
	1043 August 1999 Mine DMR	TC 035171-35172, 35175; TC 000350-414 RD	Relevance (subsequently amended), Authentication
	1055 September 1999 Mine DMR	TC 035171-35172, 35176; TC 00419-477 RD	Relevance (subsequently amended), Authentication

1 2 3	1084	June 2000 Mine DMR	TC 35171-35172, 35177 RD; TC 11207-11211 RD; TC 000645-702 RD	Relevance (subsequently amended), Authentication
4 5 6 7 8 9 10	1099	July 2000 Mine DMR	TC 035171-35172, 35178; 001082-1144	Relevance (subsequently amended), Authentication
11 12 13 14	1100	Corrected May 2000 and July 2000 DMR sheets	TC 000752-783 RD	Authentication
15 16 17 18 19 20 21	1110	August 2000 Mine DMR	TC 011212-11215; TC 000784-858 RD	Relevance (subsequently amended), Authentication
22 23 24 25 26 27 28	1116	Final Report-Toxicity Evaluation of Outfall 001 to Ceriodaphnia by Parametrix dated August 2000	TC 051054-51090 RD	Authentication, not timely provided
11 12	1117	September 2000 Mine DMR	TC 035171-35172, 35179 RD; TC 00859- 915 RD	Relevance (subsequently amended), Authentication
13 14	1125	October 2000 Mine DMR	TC 035171-35172, 35180 RD; TC 00932- 987 RD	Relevance (subsequently amended), Authentication
15 16	1136	June 2001 Mine DMR	TC 035171-35172, 35181; TC 000997- 1077 RD	Relevance (subsequently amended), Authentication
17 18	1149	July 2001 Mine DMR	TC 035171-35712, 35182 RD; TC 011216-11218; TC 001078-1134 RD	Relevance (subsequently amended), Authentication
19 20	1165	August 2001 Mine DMR	TC 035171-35172, 35183 RD; TC 11219- 11222 RD; TC 001135-1194 RD	Relevance (subsequently amended), Authentication
21 22 23 24 25 26 27	1172	September 2001 Mine DMR	TC 035171-35172, 35184 RD; TC001197-1254 RD	Relevance (subsequently amended), Authentication
28	1193	May 2002 Mine DMR	TC 35171-35172, 35185 RD; TC 005796-5799 RD; TC 001348-1398 RD	Relevance (subsequently amended), Authentication
28	1202	June 2002 Mine DMR	TC 035171-35172, 35186 RD; TC 001399-1451 RD	Relevance (subsequently amended), Authentication

1	1217	July 2002 Mine DMR	TC 011175-11178 RD; TC 006492-6540 RD	Relevance (subsequently amended), Authentication
2	1218	Short-Term Chronic Toxicity of Effluents from Red Dog Mine to Pimephales promelas by ENSR dated July 2002	TC 051134-51373 RD	Relevance, Authentication
3	1229	August 2002 Mine DMR	TC 011179-1182 RD; TC 6514-6589 RD	Relevance (subsequently amended), Authentication
4	1230	Report of Short Term Chronic Toxicity Testing using Ceriodaphnia by ENSR dated September 6, 2002	TC 051374-51444 RD	Relevance, Authentication
5	1231 * labeled 2231	Bioassay Report conducted August 7-14, 2002 by CH2MHill dated August 2002	TC 051733-51766 RD	Authentication
6	1232 * labeled 2232	Bioassay Report conducted August 30 through September 3, 2002 by CH2MHill dated September 4, 2002	TC 051767-51798 RD	Relevance, Authentication
7	1245	September 2002 Mine DMR	TC 035171-35172, 35187 RD; TC 11183-11186 RD; TC 11223-11226 RD; TC 005747-5795 RD	Relevance (subsequently amended), Authentication
8	1264	Short-Term Chronic Toxicity of Effluents from Red Dog Mine to Ceriodaphnia by ENSR dated October 2002	TC 051858-52087 RD	Relevance, Authentication
9	1275	May 2003 Mine DMR	TC 13401-13405 RD; TC 12890-12896 RD; TC 012835-12889 RD	Relevance (subsequently amended), Authentication
10	1339	June 2004 Mine DMR	TC 31234-31252 RD; TC 13640-13698 RD	Relevance (subsequently amended), Authentication
11	1340	July 2004 Mine DMR	TC 031335-31338 RD; TC 31253-31334 RD	Relevance (subsequently amended), Authentication
12	1341	Report of Short-Term Chronic Toxicity Testing using Ceriodaphnia by ENSR dated August 2004	TC 051017-51053 RD	Relevance, Authentication

1 2	1394	July 2005 Mine DMR	TC 35604-35606, 35611 RD; TC 35377-35458 RD	Relevance (subsequently amended), Authentication
3 4	1418	August 2005 Mine DMR	TC 35604-35608 RD; TC 35459-35515 RD	Relevance (subsequently amended), Authentication
5 6	1446	September 2005 Mine DMR	TC 035604-35605; 35609-35619 RD; TC 35516-35603 RD	Relevance (subsequently amended), Authentication
7 8	1604	May 2007 Mine DMR	TC 038199-38269 RD	Relevance (subsequently amended), Authentication
9 10	1639	EPA Region 10 Guidance for WQBEL's Below Analytical Detection/Quantitation Level	TC 004872-4882 RD	Hearsay, Relevance, Authentication
11 12 13 14	1640	EPA Quality Assurance Memorandum dated April 16, 1999 for TDS Project Samples Total Metals in Water; Total Hardness from Stephanie Le to Michael Letourneau	TC 004258-4285 RD	Hearsay, Authentication
15 16 17	1641	EPA Memorandum dated June 9, 1999 from Dave Mount to Mike Letourneau re Results fo TDS Toxicity Testing	TC 004286-4294 RD	Hearsay, Relevance, Authentication
18 19 20	1642	EPA Guidance on Water quality Based Effluent Limits Set Below Analytical Detection/Quantitation Limits dated April 25, 2005	TC 034652-34654 RD	Hearsay, Authentication
21 22 23	1643	April 21, 2002 letter from Micheal Gearhed, EPA to Lynn Kent, ADEC re EPA Review of Main Stem Red Dog Creek Site-Specific Criterion for Arctic Grayling spawning period	TC 037222-37224 RD	Hearsay, Authentication
24 25 26	1644	Letter dated July 23, 1999 from ADF&G, Alvin Ott to Roger Mochnick, US EPA re TDS	TC 004318-4319 RD	Hearsay, Authentication

1 2 3 4	1645 Public Health Evaluation of Exposure of Kivalina and Noatak Residents to Heavy Metals from Red Dog Mine dated October 25, 2001 by Division of Public Health Section of Epidemiology	NA	Hearsay, Relevance (don't need to show health impacts), Authentication
5 6 7	1646 ADEC Decision Document for a TDS Site-Specific Criterion for Red Dog Creek dated January 12, 2006	TC 037210-37221 RD	Hearsay, Authentication
8 9	1647 Kivalina Sanitary Survey dated May 2004 by ASCG Incorporated	TC 030574-30694B RD	Relevance (don't need to show health impacts), Authentication
10 11	1648 Discharge TDS SOP	NA	Relevance, Authentication
12 13	1649 Sodium Sulfide Dosage Changes SOP dated 2003	NA	Relevance, Authentication
14 15	1650 Sodium Sulfide Dosage Changes SOP	TC 037880-37895 RD	Hearsay, Authentication
16 17	1651 Sodium Sulfide System Process Description	NA	Relevance, Authentication
18 19	1652 In-Stream Control of TDS at Red Dog Mine	NA	Relevance, Authentication
20 21	1653 Toxicity Reduction Evaluation by EVS Environmental Consultants dated December 1999	TC 004610-4654 RD	Hearsay, Authentication, Relevance
22 23	1654 Toxicity Identification for Red Dog Mine, Phase I, dated March 2000 EVS Environmental Consultants	TC 004655-4703 RD	Hearsay, Authentication, Relevance
24 25	1655 Toxicity Reduction Evaluation Report dated August 2003	TC 032586-32683 RD	Authentication
26 27	1656 2000 Aquatic Biomonitoring at Red Dog Mine dated May 15, 2001	NA	Relevance, Authentication
28	1657 2001 Aquatic Biomonitoring at Red Dog Mine dated May 2002, Report No. 02-04	TC 004863 RD	Relevance, Authentication
	1658 2002 Aquatic Biomonitoring at Red Dog Mine dated 2003, Report No. 03-03	NA	Relevance, Authentication

1	1659	2003 Aquatic Biomonitoring at Red Dog Mine dated April 2004, Report No. 04-02	TC 030695-30836B RD	Relevance, Authentication
2	1661	2004 Aquatic Biomonitoring at Red Dog Mine dated May 2005, Report No. 05-03	TC 035773 RD	Relevance, Authentication
3	1662	2005 Aquatic Biomonitoring at Red Dog Mine dated May 2006, Report No. 06-03	TC 037323 RD	Relevance, Authentication
4	1663	2006 Aquatic Biomonitoring at Red Dog Mine dated June 2007, Report No. 07-03	NA	Relevance, Authentication
5	1664	Chart: Sulfate & TDS at Station 1 and 2	NA	Relevance, Authentication
6	1665	Chart: Total Cyanide and WAD Cyanide at Station 2	NA	Relevance, Authentication
7	1666	Chart: Cadmium at Station 1 and 2	NA	Relevance, Authentication
8	1667	Graph: Comparison of Returns-Actual Dow Jones v. Kavanaugh Assumptions July 1, 1999 - January 11, 2008	NA	Relevance, Authentication
9	1668	Chart: Summary of Economic Benefit Results Using the Correct Financial Methodology	NA	Authentication
10	1669	Chart: Methodology that disregards the Distinction Between Ex-Post and Ex-Ante Information	NA	Relevance, Authentication
11	1670	Chart: Economic Benefit Methodology Based on the distinction Between Ex-Post and Ex-Ante Information	NA	Relevance, Authentication
12	1671	Aerial view of Red Dog Creek premining	NA	Relevance, Authentication
13	1672	Aerial view of Tailings pond	NA	Relevance, Authentication
14	1673	Aerial view of Outfall 001	NA	Authentication
15	1674	Side view of Outfall 001	NA	Authentication
16	1675	Area map of Red Dog Mine	NA	Relevance, Authentication

1	1676	Red Dog Mine Mixing Zones: Sta. 150, 9 & 10	NA	Relevance, Authentication
2	1677	Red Dog Mine Mixing Zones: Sta. 151, 20, 12	NA	Relevance, Authentication
3	1678	Origin of the Opportunity photograph	NA	Relevance, Authentication
4	1679	Water Balance tailings pond diagram	NA	Relevance, Authentication
5	1680	Map of TDS limits	NA	Relevance, Authentication
6	1681	Graph: Impoundment of TDS 1998-2007	NA	Relevance, Authentication
7	1682	Chart: Discharge Performance by Month to Red Dog Creek	NA	Relevance, Authentication
8	1683	Pond Elevation Since 1998	NA	Relevance, Authentication
9	1684	Photograph of Red Dog Clean Water Bypass/Diversion System	NA	Relevance, Authentication
10	1685	Photographs of Middle Fork- Before and After	NA	Relevance, Authentication
11	1686	Red Dog Operations tailings impoundment photograph	NA	Relevance, Authentication
12	1687	Photograph of Sulfur Creek, Pre-mining	NA	Relevance, Authentication
13	1688	Photograph of Alvinella Seep	NA	Relevance, Authentication
14	1689	Photograph of Red Dog Diversion	NA	Relevance, Authentication
15	1690	Photograph of Clean Water Bypass Upgrades	NA	Relevance, Authentication
16	1691	Photograph of Clean Water Bypass Upgrades 4	NA	Relevance, Authentication
17	1692	Diversion Ditch 4 Construction	NA	Relevance, Authentication
18	1693	Tailing Pond & Dam Locations Map	NA	Authentication
19	1694	Back Dam diagram	NA	Relevance, Authentication

1	1695	Photograph of Water Treatment Plants	NA	Relevance, Authentication
2	1696	Photograph of 4 th Sandfilter	NA	Relevance, Authentication
3	1697	Photograph of new Sandfilter Building	NA	Relevance, Authentication
4	1698	Photograph of Water Treatment Plant 3	NA	Relevance, Authentication
5	1699	Aerial photograph of Outfall 001	NA	Relevance, Authentication
6	1700	Water Management diagram of tailings impoundment	NA	Relevance, Authentication
7	1701	Map: Streams and Sample Locations in the Immediate vicinity of Red Dog Mine	NA	Relevance, Authentication
8	1702	Map: Streams and Rivers Downstream of Red Dog Mine	NA	Relevance, Authentication
9	1703	Photograph of Middle Fork Red Dog Creek at point where effluent enters creek dated July 1995	NA	Authentication
10	1704	Map: Red Dog Creek identification of TDS zones	NA	Relevance, Authentication
11	1705	Map: Red Dog Creek identification of spawning areas	NA	Relevance, Authentication
12	1706	Aerial photograph of Red Dog Creek pre-mining	TC 011462 RD	Relevance, Authentication
13	1707	Chart: Station 1 Average TDS 1991-2005	NA	Relevance, Authentication
14	1708	Chart: Station 1 Average TDS 1999-2005	NA	Relevance, Authentication
15	1709	Spreadsheet: TDS Data Station 10 for 2002 and 2003	NA	Authentication
16	1710	Spreadsheet: Estimated TDS Concentration at Station 10 on July 7, 1999	NA	Relevance, Authentication
17	1711	Figure 104: Dolly Varden Kidney Tissue, Cadmium	NA	Relevance, Authentication

1 2 3 4	1712	August 10, 2000 letter re Red Dog Mine: Request for Site-Specific Criteria, Authorization of Mixing Zones and Modification of 401 Certification	TC 003411-3418 RD	Relevance, Authentication
5 6 7 8 9	1713	January 9, 2001 letter re Red Dog Mine Revised Request for Site-Specific Criterion	TC 004921-4929 RD	Hearsay, Authentication, Relevance
10 11 12 13	1714	December 20, 2002 letter to Walter Sampson re sanitary water survey in Kivalina	TC 029902-29909 RD	Hearsay, Authentication, Relevance
14 15 16 17	1715	February 5, 2003 letter to Millie Hawley re fish tissues	TC 011329 RD	Hearsay, Authentication, Relevance
18 19 20 21 22	1716	March 4, 2003 letter ro Craig Paulson re Village of Kivalina Drinking WaterSample Results	TC 031633-31639 RD	Hearsay, Authentication, Relevance
23 24 25 26 27 28	1717	April 29, 2003 letter from ADF&G to Millie Hawley re fish samples	TC 031633-31639 RD	Hearsay, Authentication, Relevance
	1718	June 27, 2004 US EPA Memorandum to Craig Paulsen re Peer Review and Verification of the Total Metals, and Hardness Analyses for Kivalina Village	TC 012443-12456 RD	Hearsay, Authentication, Relevance
	1719	Drinking Water Sampling memo dated July 14, 2003 by Joe Wallace and Eva Chun	TC 012573-12589 RD	Hearsay, Authentication, Relevance
	1720	August 14, 2002 EPA Memorandum to Craig Paulsen re Data Verification Report of Volatile Organic Analyses' Results for the Kivalina Village Project Samples	TC 012601-12690 RD	Hearsay, Authentication, Relevance
	1721	October 2, 2003 EPA Memorandum to Craig Paulsen re Case narrative with Peer Review Memo for Kivalina Water Sampling for Haloacetic Acids in Water	TC 012530-12538 RD	Hearsay, Authentication, Relevance
	1722	June 10, 1999 email from Phyllis Scannell to EPA re effects of TDS in Red Dog Creek	TC 003447-3448 RD	Hearsay, Authentication, Relevance

1	1723	July 12, 1999 email from Mark Thompson to Bruce Woods/EPA re Cyanide Detection Limit	TC 004934-4938 RD	Hearsay, Authentication
2	1724	July 27, 2002 Memorandum from Al Ott to Pete McGee re Red Dog Mine - distribution of Spawning Fish, Mixing Zone Requests for TDS	TC 005198-5205 RD	Hearsay, Authentication
3	1725	Topographical Map of Spawning Areas	TC 005206 RD	Authentication
4	1726	February 24, 2005 Memorandum from Mark Thompson to Pete McGee re Cadmium Natural Background SSC, Red Dog Creek	TC 034627-34628 RD	Hearsay, Relevance, Authentication
5	1727	Red Dog Spring Trip Report May 23 - June 9, 2004	TC 035762-35764 RD	Relevance, Hearsay, Authentication
6	1728	Red Dog Spring Trip Report June 10 - 17, 2006	TC 037324-37331 RD	Relevance, Hearsay, Authentication
7	1733	Alaska Miners Association Discussion: Environmental Permitting-Priorities & Approaches	TC 034544-34571 RD	Relevance, Hearsay, Authentication
8	1734	Red Dog Use Attainability Analysis Aquatic Life Component dated February 1996 by Phyllis Weber Scannell	TC 031166-31203A RD	Relevance, Hearsay, Authentication
9	1735	Effects of Total Dissolved Solids on Aquatic Organisms dated June 2001 by Phyllis Weber Scannell	TC 004445-4481 RD	Relevance, Hearsay, Authentication
10	1736	Comparison of Mainstem Red Dog Creek premining and Current Conditions dated March 2005 by Phyllis Weber Scannell	TC 036809-36830 RD	Relevance, Hearsay, Authentication
11	1737	November 28, 2005 letter from Phyllis Weber Scannell to Al Ott re Fish Tissue data from the Wulik and Kivalina Rivers	TC 035936-35954 RD	Relevance, Hearsay, Authentication

1 2 3 4	1738 Aquatic Baselines Sampling, Wulik River Drainage Volume I: Summary of Biological and Water Quality Information dated April 2006 by Al Ott and Phyllis Weber Scannell	TC 037366 RD	Relevance, Hearsay, Authentication
5 6 7 8	1738B Aquatic Baselines Sampling, Wulik River Drainage Volume II: Appendices of Tabulated Data dated April 2006 by All Ott and Phyllis Weber Scannell	TC 037367 RD	Relevance, Hearsay, Authentication
9 10 11	1740 Juvenile Dolly Varden Whole Body Metals Analyses, Red Dog Mine (2002) dated May 2004 by Al Ott and William Morrise	TC 03174 RD	Relevance, Hearsay, Authentication
12	1741 Oversize Map of Red Dog Mine Environmental Stations	NA	Relevance, Authentication
13 14	1742 Oversize Map of Red Dog Mine Environmental Stations including Station 1 and Chukchi Sea	NA	Relevance, Authentication
15 16	1743 Oversize Map of Kivalina Area Use	NA	Relevance, Authentication
17	1744 Oversize Map of Kivalina Community	NA	Relevance, Authentication

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20 Plaintiffs file this objection subject to the Court's Pretrial Order at Docket 177.

21 Respectfully submitted,

22 _____
23 /s/ Luke Cole
24 Luke Cole
25 Attorney for Plaintiffs
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1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 29th day of January 2008, a true and correct copy of the foregoing Objections to Teck Cominco's
Final Exhibit List was served, via electronic mail, on the below identified parties of record:

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17 Luke Cole